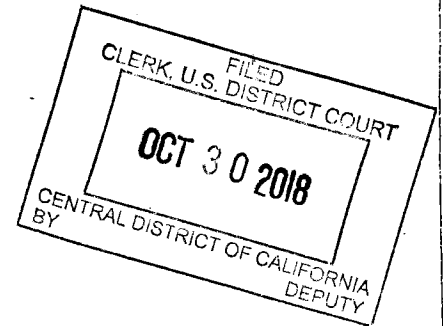


1 ANTHONY BROWN SR.

2 P.O. BOX 409060

3 IONE, CA 95640

4 In Pro-Per



7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

11 ANTHONY BROWN
12 PLAINTIFF

13 -VS-

14 COUNTY OF LOS ANGELES, et al
15 DEFENDANTS

CASE NO: CV 15-2162 DDP(FFM)
PLAINTIFF'S OBJECTION TO
THE MAGISTRATE JUDGE'S
FINAL REPORT AND;
RECOMMENDATION

17
18 TO THE HONORABLE JUDGE DEAN D. PREGERSON,
19 ALL PARTIES, AND ALL ATTORNEYS OF RECORD:

20 PLAINTIFF ANTHONY BROWN HEREBY SUBMIT THE
21 FOLLOWING OBJECTION TO THE MAGISTRATE JUDGE'S
22 FINAL REPORT AND RECOMMENDATION REGARDING THE
23 DEFENDANTS MOTION FOR JUDGMENT ON THE PLEADINGS
24 FILED ON JANUARY 11, 2017

26 DATED: OCTOBER 13, 2018

By: 

27 ANTHONY BROWN

28 PRO-SE DEFENDANT

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

DEFENDANTS FILED THEIR JOINT NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS ON JANUARY 11, 2017 (DOCKET 55) IN WHICH THE DEFENDANTS ARGUE THE FOLLOWING;

- ALL OF PLAINTIFF'S CLAIMS ARE GOVERNED BY A TWO YEAR STATUTE OF LIMITATIONS.
- BECAUSE PLAINTIFF FILED HIS LAWSUIT ALMOST FOUR YEARS AFTER HIS CLAIMS ACCRUED, HIS ACTION IS BARRED AS UNTIMELY. AND;
- TOLLING DOES NOT APPLY TO SAVE PLAINTIFF'S CLAIMS BECAUSE HE IS SERVING THE EQUIVALENT OF A LIFE SENTENCE. [DOCKET 55]

ON JULY 9, 2018 U.S. MAGISTRATE JUDGE FREDERICK F. MUMM ISSUED HIS REPORT & RECOMMENDATION IN WHICH THE MAGISTRATE'S R&R STATED PLAINTIFF'S CLAIMS ARE TIME-BARRED. (1) THIS ACTION IS UNTIMELY (2) PLAINTIFF IS NOT ENTITLED TO TOLLING UNDER SECTION 352.1. THEREFORE, THE ACTION IS UNTIMELY. THE COURT RECOMMENDS THE MOTION BE GRANTED AND PLAINTIFF'S CLAIMS AGAINST COUNTY OF LOS ANGELES AND DEFENDANT SHERIFF LEROY D. BACA BE DISMISSED WITH PREJUDICE

1 [DOCKET NO. 72]

2 ON AUGUST 01, 2018 U.S. MAGISTRATE JUDGE
3 FREDERICK F. MUMM (IN CHAMBER) ORDER WITH-
4 DRAWING JULY 9, 2018 REPORT AND RECOMMENDATION
5 AND VACATING JULY 9, 2018 ORDER TO SHOW CAUSE
6 (DOCKET NOS. 72-74) [DOCKET NO. 78]

7 ALSO ON AUGUST 01, 2018 U.S. MAGISTRATE
8 JUDGE FREDERICK F. MUMM ISSUED HIS AMENDED
9 REPORT AND RECOMMENDATION IN WHICH THE MAGISTRATE'S
10 R.E.R. STATED PLAINTIFF'S CLAIMS ARE TIME-BARRED.
11 (1) THIS ACTION IS UNTIMELY, (2) PLAINTIFF IS NOT
12 ENTITLED TO TOLLING UNDER SECTION 352.1.

13 THEREFORE, THE ACTION IS UNTIMELY. THE COURT
14 RECOMMENDS THE MOTION BE GRANTED AND PLAINTIFF'S
15 CLAIMS AGAINST COLA AND ALL DEFENDANTS BE
16 DISMISSED WITH PREJUDICE [DOCKET NO. 79].

17 PLAINTIFF FILED AN OBJECTION TO THE
18 AMENDED REPORT & RECOMMENDATION NOW ATTACHED
19 AS EXHIBIT-5

20 DEFENDANTS FILED THEIR JOINT RESPONSE
21 TO PLAINTIFF'S OBJECTIONS TO REPORT AND
22 RECOMMENDATION OF THE MAGISTRATE COURT. NOW
23 ATTACHED AS EXHIBIT-6

24 PLAINTIFF FILED SUR-REPLY NOW ATTACHED
25 AS EXHIBIT-7 IN WHICH PLAINTIFF ARGUED THE
26 CALIFORNIA CASE (PEOPLE V. CABALLERO, 55 CAL. 4TH
27 1373 (2001)) THAT THE DEFENDANTS USE TO SUPPORT
28 THEIR ARGUMENT DOES NOT APPLY TO PLAINTIFF

AND DO NOT APPLY TO CALIFORNIA CODE OF CIVIL
 PROCEDURE SECTION 352.1. FURTHER PLAINTIFF ALSO
 ARGUED THE NINTH CIRCUIT HAS REPEATEDLY
 RECOGNIZED THAT CALIFORNIA LAW PROVIDES A TWO
 YEAR STATUTE OF LIMITATION FOR PERSONAL-INJURY
 ACTIONS, PLUS AN ADDITIONAL TWO YEARS TOLLING
 THE STATUTE OF LIMITATIONS BASED ON THE
 DISABILITY OF IMPRISONMENT CITING CCP §§
 335.1, 352.1 TOTALING 4 YEARS TO FILE A LAWSUIT.
 PLEASE SEE EXHIBIT-7 ATTACHED

ON OCTOBER 12, 2018 PLAINTIFF RECEIVED
 FINAL REPORT AND RECOMMENDATION ISSUED BY
 MAGISTRATE JUDGE FREDERICK F. MUMM THAT
 WAS POSTDATED OCTOBER 05, 2018 IN WHICH
 THE MAGISTRATE'S FINAL REPORT & RECOMMENDATION
 STATED PLAINTIFF CLAIMS ARE TIME BARRED. (1)
 THE ACTION IS UNTIMELY. (2) PLAINTIFF IS NOT
 ENTITLED TO TOLLING UNDER SECTION 352.1
 THEREFORE, THE COURT RECOMMENDS THE MOTION
 BE GRANTED AND PLAINTIFFS CLAIMS AGAINST
 ALL DEFENDANTS BE DISMISSED WITH PREJUDICE
 [DOCKET NO. 87.]

II. PLAINTIFF RESPECTFULLY OBJECT TO THE
U.S. MAGISTRATE JUDGE' FINAL REPORT AND
RECOMMENDATION

PLAINTIFF FILED HIS COMPLAINT IN THE
 IN THE INSTANT MATTER ON MARCH 24, 2015
 [DOCKET NO. 1] WITHIN FOUR (4) YEARS
 BEFORE THE STATUTE OF LIMITATIONS EXPIRED.
 SEE CAL. CIV. PROC. CODE § 335.1 (STATUTE OF
 LIMITATIONS FOR PERSONAL INJURY ACTIONS IN
 CALIFORNIA IS TWO (2) YEARS); CAL. CIV. PROC.
 CODE § 352.1 (a) (THE LIMITATIONS PERIOD IS
 TOLLED FOR AN ADDITIONAL TWO (2) YEARS FOR
 INCARCERATED INDIVIDUALS); JONES V. BLANAS,
 393 F.3d 918, 927 (9TH CIR. 2004) (FOR ACTIONS
 UNDER 42 U.S.C. § 1983 COURTS APPLY THE FORUM
 STATE STATUTE OF LIMITATIONS FOR PERSONAL
 INJURY ACTIONS, ALONG WITH THE FORUM STATES
 LAW REGARDING TOLLING EXCEPT TO THE
 EXTENT ANY OF THESE LAWS IS INCONSISTENT
 WITH FEDERAL LAW)

CALIFORNIA CODE OF CIVIL PROCEDURE
 SECTION 352.1 (a) PROVIDES A MAXIMUM TOLLING
 PERIOD OF TWO YEARS FOR A PLAINTIFF IN CUSTODY.
 IN TOTAL, THEN; AN INCARCERATED INMATE'S
 CIVIL RIGHTS CLAIMS MUST TYPICALLY BE
 BROUGHT WITHIN FOUR (4) YEARS OF THE ALLEGED
 INFRINGEMENT. SEE U.S. COURT OF APPEALS OF
 THE NINTH CIRCUIT 2013 U.S. DIST LEXIS 26394
 DAILY V. PROSPER FEBRUARY 25, 2013.

AS OF JANUARY 1, 2003, THE LAW GIVES

1 A PERSON TWO (2) YEARS TO FILE A LAWSUIT SEEKING
 2 MONEY DAMAGES. SEE CODE OF CIVIL PROCEDURE §
 3 335.1. IN ADDITION, FOR PRISONERS SERVING
 4 DETERMINATE SENTENCES OR LIFE WITH THE
 5 POSSIBILITY OF PAROLE, THE TIME LIMITS FOR
 6 FILING A CIVIL RIGHTS ACTION FOR DAMAGES
 7 ARE "TOLLED" (OR DO NOT BEGIN) FOR TWO
 8 ADDITIONAL YEARS. CODE OF CIVIL PROCEDURES
 9 § 352.1; MARTINEZ V. GOMEZ (9TH CIR 1998)
 10 137 F.3d 1124 (TOLLING APPLIES TO PRISONERS
 11 SERVING LIFE WITH POSSIBILITY OF PAROLE).

12 THERE IS NO TOLLING OF THE TIME LIMIT FOR
 13 PRISONERS SENTENCED TO LIFE WITHOUT PAROLE

14 THUS, MOST PRISONERS WHO WANT TO FILE
 15 A SECTION 1983 LAWSUIT FOR MONEY DAMAGES
 16 CAN WAIT FOR FOUR YEARS BEFORE THE FILING
 17 TIMELINE RUNS OUT. THE EXTENDED FOUR-YEAR
 18 TOTAL TIMELINE ALSO APPLIES IN CASES WHERE
 19 A PRISONER SUFFERED HARM PRIOR TO JANUARY 1,
 20 2003 AND THE FILING TIMELINE HAD NOT RUN OUT.

21
 22 III. THE NINTH CIRCUIT HAS REPEATEDLY
 23 RECOGNIZED THAT CALIFORNIA LAW PROVIDES
 24 A TWO-YEAR STATUTE OF LIMITATION FOR
 25 PERSONAL-INJURY ACTIONS, PLUS AN ADDITIONAL
 26 TWO YEARS TOLLING BASED ON THE DISABILITY
 27 OF IMPRISONMENT CITING CCP §§ 335.1,
 28 352.1

1 THERE IS NO DISPUTE THAT PLAINTIFF HAS BEEN
2 INCARCERATED SINCE AUGUST 05, 2009 AND WHILE IN CUSTODY
3 THE INCIDENT GIVING RISE TO PLAINTIFF ANTHONY BROWN'S
4 COMPLAINT (DOC. 1.) OCCURRED AUGUST 2011 THROUGH SEPTEMBER
5 2011. PLAINTIFF'S UNINTERRUPTED INCARCERATION FROM AUGUST
6 05, 2011 TO PRESENT IS THE TOUCHSTONE FOR APPLYING
7 CALIFORNIA'S TOLLING PROVISION FOR THE DISABILITY OF
8 IMPRISONMENT PURSUANT TO CALIFORNIA CODE OF CIVIL
9 PROCEDURE § 352.1 (a).

10 THE UNITED STATES COURT OF APPEALS OF THE
11 NINTH CIRCUIT HAS REPEATEDLY AFFIRMED OR REVERSED
12 CASE REGARDING THE REGULAR TWO-YEAR PERIOD UNDER
13 CALIFORNIA CODE OF CIVIL PROCEDURE § 335.1 PLUS TWO (2)
14 YEARS DURING WHICH ACCRUAL WAS POSTPONED DUE TO
15 THE DISABILITY OF IMPRISONMENT § 352.1 (a). THE
16 DISABILITY TOLLING STATUTE EFFECTIVELY EXTENDS THE
17 LIMITATIONS PERIOD FOR CALIFORNIA PRISONER'S § 1983
18 CLAIM TO FOUR (4) YEARS.

19 PLAINTIFF CITE THE FOLLOWING UNITED STATES
20 COURT OF APPEAL OF THE NINTH CIRCUIT CASES THAT
21 WERE APPEALED FROM THE U.S. DISTRICT COURT FOR THE
22 CENTRAL DISTRICT OF CALIFORNIA IN SUPPORT OF HIS
23 ARGUMENT THAT CALIFORNIA LAW PROVIDES A TWO-YEAR
24 STATUTE OF LIMITATIONS FOR PERSONAL-INJURY ACTIONS,
25 CCP § 335.1 PLUS AN ADDITIONAL TWO YEARS TOLLING
26 THE STATUTE OF LIMITATION BASED ON THE DISABILITY
27 OF IMPRISONMENT CCP § 352.1 WHICH APPLIES TO
28 PLAINTIFF ANTHONY BROWN. IN THE INSTANT CASE.

1 UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT

2 CASE ENTITLED: PERALTA V. CAIRE 223 FED. APPX. 666

3 FEBRUARY 20, 2007

4 APPEL FROM THE U.S. DISTRICT COURT FOR THE

5 CENTRAL DISTRICT OF CALIFORNIA D.C. NO CV-05-03662-GHK

6 GEORGE H. KING, DISTRICT JUDGE, PRESIDING

7 PERALTA'S COMPLAINT ALLEGES THAT THE DEFENDANTS

8 IMPROPERLY FORCED HIM TO BUNK IN A TOP BUNK, IN

9 VIOLATION OF DOCTOR'S ORDER, FROM AUGUST 19, 2000 TO

10 OCTOBER 9, 2000. PERALTA COMMENCED THE ADMINISTRATIVE

11 GRIEVANCE PROCESS ON OCTOBER 7, 2004, TWO DAYS BEFORE

12 THE STATUTE OF LIMITATIONS EXPIRED. SEE CAL. CIV. PROC.

13 CODE § 335.1 (STATUTE OF LIMITATIONS FOR PERSONAL INJURY

14 ACTIONS IN CALIFORNIA IS TWO YEARS); CAL. CIV. PROC. CODE

15 § 352.1 (a) (THE LIMITATIONS PERIOD IS TOLLED FOR AN

16 ADDITIONAL TWO YEARS FOR INCARCERATED INDIVIDUALS);

17 JONES V. BLANAS, 393 F.3d 918, 927 (9TH CIR 2004) (FOR

18 ACTIONS UNDER 42 USC § 1983, COURTS APPLY THE FORUM

19 STATES STATUTE OF LIMITATIONS FOR PERSONAL INJURY ACTIONS,

20 ALONG WITH THE FORUM STATES LAW REGARDING TOLLING,

21 EXCEPT TO THE EXTENT ANY OF THESE LAWS IS INCONSISTENT

22 WITH FEDERAL LAW); BROWN V. VALOFF, 422 F.3d 926, 943

23 (9TH CIR 2005) (THE APPLICABLE STATUTE OF LIMITATION MUST

24 BE TOLLED WHILE A PRISONER COMPLETES THE MANDATORY

25 EXHAUSTION PROCESS). THE DISTRICT COURT ERRED WHEN

26 IT DISMISSED PERALTA'S ACTION AS TIME BARRED.

27
28 UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT

2013 U.S. DIST. LEXIS 26394 DAILY V. PROSPER FEBRUARY
25, 2013

APPEAL FROM THE U.S. DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA OPINION BY MICHAEL B. WILNER
U.S. MAGISTRATE JUDGE THE FINAL REPORT & RECOMMENDATION
IS SUBMITTED TO THE HONORABLE OTIS D. WRIGHT II U.S.
DISTRICT JUDGE SEE B. STATUTE OF LIMITATIONS :

FEDERAL CIVIL RIGHTS CLAIMS ARE SUBJECT TO THE
FORUM STATES STATUTE OF LIMITATIONS FOR PERSONAL INJURY
TORTS. WILSON V. GARCIA, 471 U.S. 261, 279-80, 105 S.
CT 1938, 85 L.ED. 2d 254 (1985). UNDER CCP § 335.1,
THE LIMITATIONS PERIOD FOR SUCH AN ACTION IS TWO (2)
YEARS. IN ADDITION, FEDERAL COURTS MUST GIVE EFFECT
TO A STATE'S TOLLING PROVISIONS, INCLUDING THE TOLLING
OF A STATE STATUTE OF LIMITATIONS DURING IMPRISONMENT.
ELLIOTT V. CITY OF UNION CITY, 25 F.3d 800 (9TH CIR 1994).
GENERALLY, CALIFORNIA RECOGNIZES IMPRISONMENT AS A
SITUATION THAT TOLLS THE STATUTE OF LIMITATION. CCP §
352.1 (a) PROVIDES A MAXIMUM TOLLING PERIOD OF
TWO YEARS FOR A PLAINTIFF IN CUSTODY. IN TOTAL,
THEN, AN INCARCERATED INMATE'S CIVIL RIGHTS CLAIMS
MUST TYPICALLY BE BOUGHT WITHIN FOUR (4) YEARS OF
THE ALLEGED INFRINGEMENT.

UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT
CASE ENTITLED: WILLIAMS V. KERKFOOT 669 FED APPX 380
SEPTEMBER 13, 2016

APPEAL FROM THE U.S. DISTRICT COURT FOR THE

CENTRAL DISTRICT OF CALIFORNIA. D.C. NO 2:14 CV 07583

GW-KK GEORGE H. WU, DISTRICT JUDGE, PRESIDING 2015

U.S. DIST. LEXIS 64783 (C.D. CAL., MAY 15, 2015)

"[A]CTUAL, UNINTERRUPTED INCARCERATION IS THE TOUCHSTONE FOR APPLYING CALIFORNIA'S TOLLING PROVISION OF THE DISABILITY OF IMPRISONMENT."

UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT

CASE ENTITLED: BODNAR V. RIVERSIDE COUNTY SHERIFFS DEPT.

519 FED. APPX. 511 MAY 14, 2013

APPEAL FROM U.S. DISTRICT COURT FOR THE CENTRAL DIST.

OF CALIFORNIA. D.C. NO. 5:11-CV-00092 - DSF-OP DALE S.

FISCHER, DISTRICT JUDGE, PRESIDING 2012 U.S. DIST. LEXIS

51712 (C.D. CAL. APRIL 12, 2012)

THE DISTRICT COURT PROPERLY DISMISSED BODNAR'S

ACTION AS TIME BARRED BECAUSE BODNAR FILED THIS

ACTION MORE THAN FOUR YEARS AFTER THE ALLEGED USE

OF EXCESSIVE FORCE. SEE CAL. CIV. PROC. CODE §§ 335.1

352.1 (a) (TWO-YEAR STATUTE OF LIMITATIONS FOR PERSONAL

INJURY CLAIMS; LIMITATIONS PERIOD MAY BE TOLLED FOR

AN ADDITIONAL TWO YEARS FOR PRISONERS); JONES, 393

F.3d AT 927 ("FOR ACTIONS UNDER 42 USC § 1983, COURTS

APPLY THE FORUM STATE'S STATUTE OF LIMITATIONS FOR

PERSONAL INJURY ACTIONS")

UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT

CASE ENTITLED: DOSS V. CITY OF LONG BEACH 559 FED.

APPX. 636 FEBRUARY 18, 2014

1 APPEAL FROM THE U.S. DISTRICT COURT FOR THE CENTRAL
 2 DISTRICT OF CALIFORNIA. D.C. NO. 2:10-CV-07134-VBF, ANB
 3 VALERIE BAKER FAIRBANK, DISTRICT JUDGE, PRESIDING. 2012
 4 U.S. DIST. LEXIS 124601 (C.D. CAL. AUGUST 30, 2012)

5 THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT
 6 BECAUSE DOSS'S ACTION, BROUGHT MORE THAN FIVE YEARS
 7 AFTER HIS CLAIM ACCRUED, WAS TIME BARRED. SEE
 8 CAL. CIV. PROC. CODE §§ 335.1, 352.1 (a) (SETTING FORTH
 9 CALIFORNIA'S TWO-YEAR STATUTE OF LIMITATIONS FOR PERSONAL
 10 INJURY CLAIMS AND ADDITIONAL STATUTORY TOLLING DUE TO
 11 INCARCERATION NOT TO EXCEED TWO YEARS).

12
 13 UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT
 14 CASE ENTITLED: SMITH V. KOURI 563 FED APPX 561 MARCH
 15 10, 2014

16 APPEAL FROM THE U.S. DISTRICT COURT FOR THE CENTRAL
 17 DISTRICT OF CALIFORNIA. D.C. NO. 2:09-CV-09219-JAK
 18 JOHN A. KRONSTADT, DISTRICT JUDGE, PRESIDING. 2011
 19 U.S. DIST. LEXIS 77108 (C.D. CAL., JULY 15, 2011)

20 THE DISTRICT COURT PROPERLY DECLINED TO APPLY TOLLING
 21 PURSUANT TO CAL. CIV. PROC. CODE § 352.1 WHICH STATES THAT
 22 PRISONERS ARE ENTITLED TO TWO YEARS OF STATUTORY TOLLING
 23 BECAUSE AT THE TIME SMITH'S CLAIMS ACCRUED, SMITH
 24 WAS NOT IMPRISONED ON A CRIMINAL CHARGE. SEE CAL.
 25 CIV. PROC. CODE § 357 ("NO PERSON CAN AVAIL HIMSELF OF
 26 A DISABILITY, UNLESS IT EXISTED WHEN HIS RIGHT OF
 27 ACTION ACCRUED."); ELLIOTT V. CITY OF UNION CITY, 25 F.3d
 28 800, 802-03 (9TH CIR 1994) (EXPLAINING THAT "ACTUAL, UN-

1 INTERRUPTED INCARCERATION IS THE TOUCHSTONE " FOR
 2 ASSESSING TOLLING IN POST-ARREST CUSTODY SITUATIONS)
 3 (CITATION OMITTED) AND FINALLY;

4
 5 UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT
 6 CASE ENTITLED : SANDOVAL V. CHINO STATE PRISON 626
 7 FED. APPX. 727 DECEMBER 9, 2015

8 APPEAL FROM THE U.S. DISTRICT COURT FOR THE CENTRAL
 9 DISTRICT OF CALIFORNIA. D.C. NO. 5:15-CV-00327-JLS-
 10 KK JOSEPHINE L. STATON, DISTRICT JUDGE, PRESIDING
 11 2015 U.S. DIST LEXIS 39687 (C.D. CAL. MARCH 24, 2015)

12 PLAINTIFF CLAIMS ACCRUED ON FEBRUARY 10, 2010,
 13 THE DATE HE ALLEGES HE WAS HOUSED IN AN OVER-
 14 CROWDED ROOM AT CHINO STATE PRISON SEE ECF NO.
 15 1, AT 1, 3. STARTING FROM THE DATE, PLAINTIFF HAD
 16 AT MOST FOUR (4) YEARS - THAT IS, UNTILL FEBRUARY
 17 10, 2014 - TO FILE HIS CLAIMS: TWO YEARS UNDER SECTION
 18 1983'S STATUTE OF LIMITATIONS, AND TWO YEARS OF
 19 TOLLING FOR THE " DISABILITY OF IMPRISONMENT."
 20 JONES, 393 F.3d AT 927. PLAINTIFF DID NOT FILE
 21 THE COMPLAINT UNTILL FEBRUARY OF 2015 SEE ECF
 22 NO. 1 AT 6. THUS ABSENT EQUITABLE TOLLING, THE
 23 COMPLAINT IS TIME-BARRED.

24
 25 THE ABOVE CITED 9TH CIRCUIT CASES MAKES CLEAR
 26 THAT CALIFORNIA LAW PROVIDES A TWO-YEAR STATUTE
 27 OF LIMITATION FOR PERSONAL-INJURY ACTIONS, PLUS
 28 AN ADDITIONAL TWO YEARS TOLLING THE STATUTE OF

1 LIMITATION BASED ON THE DISABILITY OF IMPRISONMENT

2 SEE JONES V. BLANAS, 393 F.3d 918 (9TH CIR 2004)

3 (CITING CALIFORNIA CIVIL CODE OF PROCEDURE §§ 335.1 352.1(w))

4 IN THE INSTANT CASE PLAINTIFF ANTHONY BROWN FILED
 5 HIS COMPLAINT (DOC. 1) WITHIN FOUR (4) YEARS (STATUTE OF
 6 LIMITATIONS FOR PERSONAL INJURY ACTIONS IS TWO YEARS § 335.1)

7 (THE LIMITATIONS PERIOD IS TOLLED FOR AN ADDITIONAL
 8 TWO YEARS FOR INCARCERATED INDIVIDUALS § 352.1)

9 PLAINTIFF'S CLAIMS ACCRUED AT THE LATEST
 10 SEPTEMBER 2011. PLAINTIFF'S COMPLAINT WAS FILED
 11 MARCH 24, 2015 (DOC. 1) WITHIN THE FOUR (4) YEARS
 12 ALLOWED PURSUANT TO CCP §§ 335.1 AND 352.1(a)
 13 PLAINTIFF'S COMPLAINT WAS FILED IN A TIMELY MANNER

14 CONCLUSION

15
 16 FOR THE FOREGOING REASONS PLAINTIFF
 17 ANTHONY BROWN RESPECTFULLY REQUEST THAT THE COURT
 18 DISMISS THE DEFENDANT'S MOTION FOR JUDGMENT ON
 19 THE PLEADINGS.

20
 21
 22 DATED: OCTOBER 13, 2018

By: 

23 ANTHONY BROWN SR

24 PRO-SE PLAINTIFF

PROOF OF SERVICE BY UNITED STATES MAIL

I, ANTHONY BROWN, am over the age of eighteen years, a resident and prisoner of the State of California with a present mailing address of: P.O. BOX 409060 IONE, CA 95640

On OCTOBER 14, 2018, I served the following document(s):

PLAINTIFF'S OBJECTIONS TO FINAL REPORT AND
RECOMMENDATION OF U.S. MAGISTRATE FREDERICK F. MUMFORD
by placing the document(s) in a sealed envelope(s), with First Class postage having been placed thereon. Delivered the envelope(s) to a Correctional Officer who then signed & dated the back of the envelope and s/he then deposited such envelope(s) in the prisons internal legal mail system for processing and delivery to the United States Postal Service, for delivery to the addressee(s):

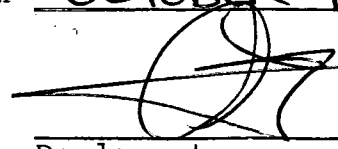
LAW OFFICES

HURRELL CANTRALL LLP

300 SOUTH GRAND AVE, SUITE 1300
LOS ANGELES, CA 90071

I declare that there has been regular U.S. mail pick-up by the Correctional Officers at the prison where I posted the envelope(s) and regular communication by mail between the place of mailing and the place(s) so addressed.

I declare under penalty of perjury under the laws of the State of California and the United States that the forgoing is true and correct and the this declaration was executed on OCTOBER 14, 2018, at IONE, CA


Declarant

NOTE: Pursuant to the holdings in Houston v. Lack (1988) 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245; and, In re Jordan (1992) 4 Cal.4th 116, 13 Cal.Rptr.2d 878, 840 P.2d 983, (inmate legal documents are deemed filed on the date they are delivered to prison staff for processing and mailing via the institutions internal legal mail procedures).

EXHIBIT COVER PAGE

5

EXHIBIT

Description of this Exhibit:

Number of pages to this Exhibit: 49 pages.

JURISTITION: (Check only one)

- ☐ MUNICIPAL COURT
- ☐ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

1 ANTHONY BROWN SR

2 P.O. Box 409060

3 IONE, CA 95640

4 In Pro-Per

5
6
7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9

10
11 ANTHONY BROWN

12 PLAINTIFF

13 -VS-

14 COUNTY OF LOS ANGELES, et al.

15 DEFENDANTS
16

CASE NO: CV 15-2162 DDP(FFM)
PLAINTIFF ANTHONY BROWN
OBJECTION TO THE
MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION
RE DEFENDANT'S MOTION
FOR JUDGMENT ON THE
PLEADINGS;

17
18 TO THE HONORABLE COURT, ALL PARTIES, AND
19 ALL ATTORNEYS OF RECORD:

20 PLAINTIFF ANTHONY BROWN HEREBY SUBMIT
21 THE FOLLOWING OBJECTION TO THE MAGISTRATE JUDGE'S
22 REPORT AND RECOMMENDATION REGARDING DEFENDANT'S
23 MOTION FOR JUDGMENT ON THE PLEADINGS
24 FILED ON JANUARY 11, 2017

25
26 DATED: AUGUST 17, 2008

By 

ANTHONY BROWN

MEMORANDUM OF POINTS AND AUTHORITIES

I. PLAINTIFF RESPECTFULLY OBJECT TO THE U.S. MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

MORE THAN 17 MONTHS AFTER THE DEFENDANTS FILED THEIR JOINT NOTICE OF MOTION FOR JUDGEMENT ON THE PLEADINGS (DOC. 55 FILED 1-11-17) ALONG WITH PLAINTIFF'S OPPOSITION TO THE DEFENDANTS MJOP FILED 2-7-17 (DOC. 61) AND PLAINTIFF'S SURREPLY (DOC. 65 FILED 2-28-17) U.S. MAGISTRATE JUDGE FREDERICK F. MUMM WROTE AMENDED REPORT AND RECOMMENDATION JULY 31, 2018. FIRST PLAINTIFF POINTS OUT THAT THE LAW OFFICES OF MILTON C. GRIMES FILED THE INSTANT COMPLAINT ON MARCH 24, 2015 (DOC. 1) AND WHILE PLAINTIFF IS CURRENTLY PROCEEDING PRO-SE THE FILING FEE WAS PAID AND PLAINTIFF IS NOT IN FORMA PAUPERIS WHEN THE ATTORNEYS WHO WERE REPRESENTING PLAINTIFF FILED THE COMPLAINT ON 3-24-15 (DOC. 1) THE ATTORNEYS STATED IN THE COMPLAINT, THE COURT HAS JURISDICTION OVER PLAINTIFF'S FEDERAL CIVIL RIGHTS CLAIM UNDER 42 U.S.C. § 1983 AND FURTHER CITED CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 352.1 (a) TOLLS THE STATUTE OF LIMITATIONS OF PLAINTIFF'S CLAIMS HEREIN, DUE TO HIS INCARCERATION, FOR AN ADDITIONAL TWO (2) YEARS; *ONTIVEROS V. LOS ANGELES COUNTY*, 611 F. SUPP. 2d 1090 (2009); AND *CARLSON V. BLATT*, 87 CAL. APP. 4TH 646 (2001). REGARDING TOLLING. SEE EXHIBIT 1 PAGE 3 LINE 3-9 ATTACHED.

THE DEFENDANTS DID NOT DISPUTE CCP § 352.1 (a)

1 IN THEIR ANSWER TO PARAGRAPH 2 OF PLAINTIFF'S COMPLAINT,
 2 FILED 5-13-15 (DOC. 14) NOW MARKED AS EXHIBIT-1A PAGE
 3 2 OF 18 PAGE ID #: 46 LINE 5-12. THEN TWO YEARS LATER WHEN
 4 PLAINTIFF WAS WITHOUT COUNSEL (WITHDRAWAL OF COUNSEL IN 2016)
 5 THE DEFENDANTS FILED JOINT MOTION FOR JUDGMENT ON THE
 6 PLEADINGS (DOC. 55 FILED 1-11-17) CLAIMING THAT PLAINTIFF'S
 7 COMPLAINT IS BARRED AS UNTIMELY. THEREFORE, ON JULY
 8 31, 2018 THE U.S. MAGISTRATE JUDGE TOOK THE SIDES OF
 9 THE DEFENDANTS AND RULED THAT PLAINTIFF IS NOT ENTITLED
 10 TO TOLLING UNDER CCP SECTION 352.1 THEREFORE, THIS
 11 ACTION IS UNTIMELY. (SEE REPORT AND RECOMMENDATION AT
 12 P. 8 LINE 14-15)

13 CONTRARY TO THE U.S. MAGISTRATE JUDGE'S
 14 RULING. UNITED STATES NINTH CIRCUIT 2016 CASE
 15 BANKS V. U.C. REGENTS, 2016 U.S. DIST. LEXIS 17839
 16 (E.D. FEBRUARY 12, 2016) MAKES IT CLEAR THAT
 17 CALIFORNIA INMATES HAVE A TOTAL OF FOUR (4) YEARS
 18 FROM THE ACCRUAL OF A CAUSE OF ACTION TO FILE
 19 A COMPLAINT CITING CARLSON V. BLATT, 87 CAL. APP.
 20 4TH 646 (2001). WHICH IS THE SAME CASE USED IN
 21 THE INSTANT COMPLAINT FILED 3-24-15 (DOC. 1)
 22 PARAGRAPH 2 PAGE 3 LINE 3-9 NOW MARKED AS
 23 EXHIBIT 1 SEE ALSO SMITH V. COOPER MARCH 27, 2012
 24 U.S. DIST. LEXIS 44134.

25 THE LAW CLEARLY STATES THE TOLLING IS
 26 APPLICABLE TO INMATES SERVING A LIFE SENTENCE
 27 WITH THE POSSIBILITY OF PAROLE. SUCH AS PLAINTIFF
 28 ANTHONY BROWN. SEE MARTINEZ V. GOMEZ, 137 F.3d

1 1124, 1126 (9th Cir 1998) Thus the length of the
 2 sentence is irrelevant. See Sonntag v. Nev. County,
 3 2011 U.S. Dist LEXIS 99961 (E.D. Cal. Sept. 6, 2011)

4 CALIFORNIA CODE OF CIVIL PROCEDURE SECTION
 5 352.1 (a)'s plain language is California prisoner
 6 sentenced to life without possibility of parole
 7 was not entitled to tolling under CCP § 352.1

8 Plaintiff Anthony Brown was sentenced to
 9 life with the possibility of parole on each
 10 and every count of his criminal case. See
 11 Exhibit 2. Finally, since plaintiff is without
 12 lawyers and is a pro se litigant, the
 13 defendants are trying to take advantage of
 14 plaintiff to prevent plaintiff Anthony Brown
 15 from having his day in court. Please see
 16 Exhibits 1, 1A, 2, 3 and 4.

17
 18 II. ALL OF PLAINTIFF'S CLAIMS ARE GOVERNED
 19 BY A FOUR YEAR STATUTE OF LIMITATIONS

20
 21 UNDER CALIFORNIA LAW, THE EFFECTIVE STATUTE
 22 OF LIMITATIONS FOR MOST CALIFORNIA PRISONERS IS THREE
 23 YEARS FOR CLAIMS ACCRUING BEFORE JANUARY 1, 2003
 24 (ONE YEAR LIMITATIONS PERIOD PLUS TWO YEARS OF STATUTORY
 25 TOLLING), AND FOUR YEARS FOR CLAIMS ACCRUING THEREAFTER
 26 (TWO YEAR LIMITATIONS PERIOD PLUS TWO YEARS OF STATUTORY
 27 TOLLING). GARCIA V. LUNES, NO. CV 1-06-167, 2010 U.S. DIST.
 28 LEXIS 44672, 2010 WL 1267128 AT *2 (E.D. CAL. MAR. 30,

2010) (UNPUB.) GUERRA V JANDA, 2014 U.S. DIST LEXIS 99701 (S.D. CAL JULY 22, 2014).

IN MARTINEZ V. GOMEZ 137 F.3d 1124 (9TH CIR. 1998) THE COURT CONCLUDES THAT THE PLAINTIFF IN THAT CASE WAS ENTITLED TO TOLLING BECAUSE HE WAS SERVING "A LIFE SENTENCE WITH THE POSSIBILITY OF PAROLE" WHICH CALIFORNIA COURTS HAD PREVIOUSLY HELD WAS A "TERM LESS THAN FOR LIFE." UNDER CALIFORNIA CODE OF CIVIL PROCEDURE § 352(a) (3), WHICH WAS AMENDED BY CALIFORNIA CODE OF CIVIL PROCEDURE § 352.1 SEE MARTINEZ, 137 F.3d AT 1125-26 (ITALICS ADDED) (CITATIONS OMITTED). BECAUSE PLAINTIFF IN GUERRA V. JANDA, 2014 U.S. DIST. LEXIS 99701. WAS SENTENCED TO A LIFE TERM WITHOUT THE POSSIBILITY OF PAROLE, CCP SECTION 352.1 (a)'S PLAIN LANGUAGE, WHICH PERMITS TWO YEARS OF TOLLING FOR PERSONS WHO "AT THE TIME THE CAUSE OF ACTION ACCRUED, [WERE] IMPRISONED ON A CRIMINAL CHARGE, OR IN EXECUTION UNDER THE SENTENCE OF A CRIMINAL COURT FOR A TERM LESS THAN LIFE," SIMPLY DOES NOT APPLY TO HIM. SEE E.G. GONZALEZ V. ADAMS, NO. 1:09-CV-1284, 2013 U.S. DIST LEXIS 23302, 2013 WL 636730, AT *6 (E.D. CAL. FEB 20, 2013) (UNPUB) (FINDING CALIFORNIA PRISONERS SENTENCED TO LIFE WITHOUT POSSIBILITY OF PAROLE WAS NOT ENTITLED TO TOLLING UNDER CCP § 352.1)

IN THE INSTANT CASE PLAINTIFF ANTHONY BROWN SR. WAS SENTENCED TO LIFE WITH THE POSSIBILITY OF PAROLE ON EACH COUNT CONSECUTIVELY RE: HIS CRIMINAL CONVICTION SEE THE CERTIFIED MINUTE ORDER OF PLAINTIFF'S CRIMINAL CASE NOW MARKED AS EXHIBIT 2

1 THE QUESTION BEFORE THIS COURT IS NOT WHETHER
 2 PLAINTIFF'S SENTENCE IS EQUIVALENT OF A LIFE SENTENCE
 3 WITHOUT THE POSSIBILITY OF PAROLE. BUT RATHER DID THE
 4 COURT SENTENCE PLAINTIFF TO LIFE WITHOUT THE POSSIBILITY
 5 OF PAROLE.

6 THE DEFENDANTS IN THEIR JOINT MOTION FOR
 7 JUDGMENT ON THE PLEADINGS (DOC 55) ARE SAYING IF
 8 A PRISONER WAS SENTENCED TO LIFE WITHOUT THE POSSIBILITY
 9 OF PAROLE, THE TOLLING UNDER CCP § 352.1 (a) DOES NOT
 10 APPLY TO THE PRISONER. AND PLAINTIFF AGREES. HOWEVER,
 11 THE DEFENDANTS ARE TRYING TO CHANGE THE LAW BY CLAIMING
 12 THAT A PRISONER SENTENCED TO LIFE WITH THE POSSIBILITY OF
 13 PAROLE, CALIFORNIA CODE OF CIVIL PROCEDURE § 352.1 (a) DOES
 14 NOT APPLY TO THE PRISONER EITHER. AND PLAINTIFF DISAGREES
 15 THE DEFENDANTS CLAIM TOLLING DOES NOT APPLY TO SAVE
 16 PLAINTIFF'S CLAIMS BECAUSE PLAINTIFF IS SERVING THE
 17 EQUIVALENT OF A LIFE SENTENCE [DOC 55 PAGE ID #541].

18 SECTION 352.1 (a)'S PLAN LANGUAGE IS CLEAR. CALIFORNIA
 19 PRISONER SENTENCED TO LIFE WITHOUT POSSIBILITY OF
 20 PAROLE WAS NOT ENTITLED TO TOLLING UNDER CALIFORNIA
 21 CODE OF CIVIL PROCEDURE SECTION 352.1 (a) GUERRA V.
 22 JANDA, 2014 U.S. DIST. LEXIS 99701 (S.D. CAL. JULY 22, 2014)

23 HERE, PLAINTIFF ANTHONY BROWN SR WAS SENTENCED
 24 TO LIFE WITH THE POSSIBILITY OF PAROLE FOR EACH COUNT
 25 RE: HIS CRIMINAL CASE. SEE EXHIBIT-2 ATTACHED. FURTHER,
 26 THE CALIFORNIA COURTS HAVE READ OUT OF THE STATUTE
 27 THE QUALIFICATION THAT THE PERIOD OF INCARCERATION
 28 MUST BE 'FOR A TERM LESS THAN LIFE' IN ORDER FOR

1 A PRISONER TO QUALIFY FOR TOLLING." JONES V.
 2 BLANAS, 393 F.3d 918, 928 n.5 (9TH CIR. 2004) (CITING
 3 GRASSO V. McDONOUGH POWER EQUIPMENT, INC., 264
 4 CAL. APP. 2d 597, 70 CAL. RPTR. 458, 460-61 (CAL. CT.
 5 APP. 1968) (HOLDING THAT A PRISONER SERVING A LIFE
 6 SENTENCE IS ENTITLED TO THE BENEFIT OF TOLLING)),
 7 MARTINEZ V. GOMEZ, 137 F.3d 1124, 1126 (9TH CIR. 1998).
 8 THUS, THE LENGTH OF THE SENTENCE IS IRRELEVANT.
 9 SONNTAG V. NEV. COUNTY, 2011 U.S. DIST. LEXIS 99961
 10 (E.D. CAL., SEPT. 6, 2011)

11
 12 THE APPLICABLE STATUTE OF LIMITATIONS IS FURTHER
 13 TOLLED WHILE A PRISONER COMPLETES THE EXHAUSTION
 14 PROCESS MANDATED BY THE PRISON LITIGATION REFORM
 15 ACT ("PLRA"). SEE BROWN V. VALOFF, 422 F.3d 926,
 16 942-43 (9TH CIR. 2005). IN BROWN, THE NINTH
 17 CIRCUIT OBSERVED THAT "A PRISONER MAY NOT
 18 PROCEED TO FEDERAL COURT WHILE EXHAUSTING
 19 ADMINISTRATIVE REMEDIES," AND THAT "AWAITING
 20 THE COMPLETION OF A STAFF MISCONDUCT INVESTIGATION
 21 COULD, ABSENT SOME ADJUSTMENT, ENDANGER
 22 THE PRISONER'S ABILITY TO FILE HIS COURT
 23 COMPLAINT WITHIN THE LIMITATIONS PERIOD." *Id.*
 24 AT 942. THE COURT ADDED:

25
 26 WE ALSO NOTE THAT, AGAIN LIKE ALL THE
 27 OTHER CIRCUITS THAT HAVE CONSIDERED
 28 THE QUESTION, "WE REFUSE TO INTERPRET

1 THE PLRA SO NARROWLY AS TO ... PERMIT
 2 [PRISON OFFICIALS] TO EXPLOIT THE
 3 EXHAUSTION REQUIREMENT THROUGH
 4 INDEFINITE DELAY IN RESPONDING TO
 5 GRIEVANCES." Id. AT 943 N. 18 (QUOTING
 6 LEWIS V. WASHINGTON, 300 F.3d 829, 833
 7 (7TH CIR. 2002), JERNIGAN V. STUCKELL, 304
 8 F.3d 1030 (10TH CIR. 2002), MILLER V. NORRIS,
 9 247 F.3d 736, 740 (8TH CIR. 2001), AND
 10 UNDERWOOD V. WILSON, 151 F.3d 292, 295
 11 (5TH CIR. 1998) (PER CURIAM)).

12
 13 FINALLY IN DURAN V. MANDUJO, 2017 U.S. DIST.
 14 LEXIS 141180, THE COURT STATED: TOLLING OF THE
 15 STATUTE OF LIMITATIONS IS GOVERNED BY CCP § 352.1
 16 (a) WHICH PROVIDES FOR TOLLING UP TO TWO YEARS
 17 WHEN A PERSON IS IMPRISONED AT THE TIME OF
 18 THE CAUSE OF ACTION ACCRUES. SEE CALIFORNIA CODE
 19 OF CIVIL PROCEDURE SECTION 352.1; SEE ALSO
 20 HARDIN V. STRAUB, 490 U.S. 536, 543-44, 109 S.
 21 Ct. 1998, 104 L. Ed. 2d 582 (1989) (FINDING STATE
 22 STATUTORY TOLLING DOES NOT FRUSTRATE § 1983 GOALS);
 23 TORRES V. CITY OF SANTA ANA, 108 F.3d 224, 226
 24 (9TH CIR. 1997) GIVEN THIS, PLAINTIFF IS ALLOWED A
 25 MAXIMUM OF TWO ADDITIONAL YEARS TO FILE A
 26 COMPLAINT. THE DISABILITY OF IMPRISONMENT DELAYS
 27 THE ACCRUAL OF THE ACCRUAL OF THE CAUSE OF ACTION
 28 FOR A MAXIMUM OF TWO YEARS.

III. ANALYSIS OF STATUTE OF LIMITATIONS

By UNITED STATES NINTH CIRCUIT RE:

SMITH V. COOPER, 2013 U.S. DIST LEXIS 44134

STATUTE OF LIMITATIONS

THE APPROPRIATE PERIOD FOR 42 U.S.C. § 1983 IS THAT OF THE FORUM STATE'S STATUTE OF LIMITATIONS FOR PERSONAL INJURY TORTS. THE STATUTE OF LIMITATIONS IN CALIFORNIA FOR PERSONAL INJURY ACTIONS IS TWO-YEAR PERIOD SET FORTH AT CAL. CODE CIV. PROC. § 335.1 AND IS THE APPLICABLE STATUTE IN § 1983 ACTIONS. CAL. CODE CIV. PROC. § 352.1 RECOGNIZES IMPRISONMENT AS A DISABILITY THAT TOLLS THE STATUTE OF LIMITATIONS WHEN A PERSON IS IMPRISONED ON A CRIMINAL CHARGE, OR IN EXECUTION UNDER THE SENTENCE OF A CRIMINAL COURT FOR A TERM LESS THAN FOR LIFE. CAL. CODE CIV. PROC. § 352.1 (a)

THE TOLLING OF THE STATUTE OF LIMITATIONS BASED ON THE DISABILITY OF IMPRISONMENT IS NOT INDEFINITE; THE DISABILITY OF IMPRISONMENT DELAYS THE ACCRUAL OF THE CAUSE OF ACTION FOR A MAXIMUM OF TWO YEARS. THUS, AN INMATE HAS FOUR YEARS TO FILE A 42 U.S.C. § 1983 CLAIM FOR DAMAGES IN CALIFORNIA, I.E., THE REGULAR TWO YEAR PERIOD UNDER CAL. CODE CIV. PROC. § 335.1 PLUS TWO YEARS DURING WHICH ACCRUAL WAS POSTPONED DUE TO THE DISABILITY OF IMPRISONMENT. TOLLING UNDER CAL.

1 CODE CIV. PROC. § 352.1 IS TRIGGERED BY THE PLAINTIFF'S
2 ARREST AND INCARCERATION.

3 ANALYSIS OF STATUTE OF LIMITATIONS
4 BY THE COURT RE: SMITH V COOPER, 2012 U.S.
5 DIST. LEXIS 44134

6
7 PLAINTIFF HAD A MAXIMUM OF FOUR YEARS TO FILE
8 AN ACTION: TWO YEARS FOR THE PERSONAL INJURY CAUSE
9 OF ACTION AND TWO YEARS FOR THE DISABILITY OF IMPRISONMENT
10 SEE MALDONADO, 370 F.3d AT 954, CAL. CIV. PROC. CODE
11 § 352.1 (a). THE INCIDENT GIVING RISE TO THE COMPLAINT
12 OCCURRED ON JULY 31, 2004 AND AUGUST 1, 2004, AND
13 THESE DATES ARE UNDISPUTED BY BOTH PARTIES. THE
14 RECORD SHOWS THAT PLAINTIFF WAS RELEASED SHORTLY
15 THEREAFTER AND SUBSEQUENTLY INCARCERATED AGAIN
16 IN 2006 OR 2007. THEREFORE, THE DISABILITY OF
17 IMPRISONMENT ARGUABLY SHOULD HAVE CEASED UPON
18 PLAINTIFF'S RELEASE. SEE BOAG, 669 F.2d AT 589
19 (HOLDING DISABILITY OF IMPRISONMENT CEASES UPON
20 RELEASE ON PAROLE); WILLIAMS, 244 F.2d AT 8
21 (HOLDING STATUTE OF LIMITATIONS NOT TOLLED AFTER
22 PRISONER RELEASED) HOWEVER, EVEN IF PLAINTIFF HAD
23 BEEN INCARCERATED THE ENTIRE TIME, AND HE HAD
24 THE FULL FOUR YEARS TO FILE AN ACTION - i.e.,
25 THE LIMITATIONS PERIOD WOULD AT BEST, HAVE
26 EXPIRED ON JULY 31, 2008 HOWEVER, HE FILED THE
27 INSTANT COMPLAINT ALMOST A YEAR LATER - ON MAY
28 21, 2009, THEREFORE, THE SUIT IS BARRED BY THE

1 STATUTE OF LIMITATIONS.

2 IN THE INSTANT CASE PLAINTIFF, ANTHONY BROWN SR.
3 WAS ARRESTED AUGUST 05, 2009. THE INCIDENT GIVING RISE
4 TO THE COMPLAINT (DOC. 1) OCCURRED AUGUST 2011, THROUGH
5 SEPTEMBER 2011 WHILE PLAINTIFF WAS STILL INCARCERATION.
6 THE INSTANT COMPLAINT WAS FILED MARCH 24, 2015

7 CALIFORNIA CODE OF CIVIL PROCEDURE § 352.1 (a)
8 RECOGNIZES IMPRISONMENT AS A DISABILITY THAT TOLLS
9 THE STATUTE OF LIMITATIONS WHEN A PERSON IS
10 IMPRISONED ON A CRIMINAL CHARGE, OR IN EXECUTION
11 UNDER THE SENTENCE OF A CRIMINAL COURT FOR A
12 TERM LESS THAN FOR LIFE. THE COURT IN JONES V.
13 BLANAS, 393, F.3d 918 (9TH CIR 2004) HAVE EMPHASIZED
14 THAT [I]N TERMS OF LIMITATIONS ON THE PRISONER,
15 CONTINUOUS CUSTODY IS THE RELEVANT DISABILITY
16 PLUS THE "ACTUAL, UNINTERRUPTED INCARCERATION IS
17 THE TOUCHSTONE" FOR APPLYING CALIFORNIA'S TOLLING
18 PROVISION FOR THE DISABILITY OF IMPRISONMENT
19 SEE JONES V. BLANAS, 393 F.3d 918 (9TH CIR 2004).

20 FURTHER, CALIFORNIA COURTS HAD PREVIOUSLY
21 HELD THAT A LIFE SENTENCE WITH THE POSSIBILITY
22 OF PAROLE WAS A "TERM LESS THAN FOR LIFE" UNDER
23 CALIFORNIA CODE OF CIVIL PROCEDURE § 352 (a)(3) WHICH,
24 WAS AMENDED BY CCP § 352.1 SEE MARTINEZ, 137 F.3d
25 AT 1125-26. PLAINTIFF ANTHONY BROWN WAS SENTENCED
26 TO LIFE WITH THE POSSIBILITY OF PAROLE ON EVERY COUNT
27 RE: HIS CRIMINAL CONVICTIONS PLEASE SEE EXHIBIT-2
28 PLAINTIFF CONTENDS DUE TO HIS UNINTERRUPTED

1 INCARCERATION (AUGUST 05, 2001 TO PRESENT-DAY) WHICH IS
 2 THE TOUCHSTONE FOR APPLYING CALIFORNIA TOLLING
 3 PROVISION FOR THE DISABILITY OF IMPRISONMENT, ALONG
 4 WITH THE FACT CALIFORNIA COURTS HAD PREVIOUSLY HELD
 5 THAT A LIFE SENTENCE WITH THE POSSIBILITY OF PAROLE
 6 WAS A "TERM LESS THAN LIFE" THEREFORE, PLAINTIFF
 7 ANTHONY BROWN SR CLAIMS ARE GOVERNED BY A FOUR
 8 (4) YEAR STATUTE OF LIMITATIONS.

9 STATUTE OF LIMITATION'S LEGAL STANDARD
 10 RE: BANKS V. U.C. REGENTS, 2016 U.S.
 11 DIST. LEXIS 17839 (E.D. FEB. 12, 2016)

12
 13 ACTIONS BOUGHT PURSUANT TO 42 U.S.C. § 1983 ARE
 14 GOVERNED BY THE FORUM STATE'S STATUTE OF
 15 LIMITATIONS FOR PERSONAL INJURY ACTIONS WILSON
 16 V. GARCIA, 471 U.S. 261, 265 105 S.Ct 1938, 85 L.Ed.
 17 2 254 (1985); JONES V. BLANAS, 393 918, 927 (9TH
 18 CIR. 2004) THE STATUTE OF LIMITATIONS FOR CIVIL
 19 ACTIONS FILED IN CALIFORNIA IS TWO YEARS, AS
 20 SET FORTH AT CALIFORNIA CIVIL PROCEDURE CODE
 21 SECTION 335.1, WHICH IS THE APPLICABLE STATUTE
 22 IN § 1983 ACTIONS. SEE MALDONADO V. HARRIS, 370
 23 F.3d 945, 954 (9TH CIR 2004). THE FEDERAL COURT
 24 ALSO APPLIES THE FORUM STATE'S LAWS REGARDING
 25 TOLLING, INCLUDING EQUITABLE TOLLING WHEN
 26 NOT IN CONFLICT WITH FEDERAL LAW. HARDIN V.
 27 STRAUB, 490 U.S. 536, 537-39, 109 S.Ct 1998,
 28 104 L Ed 2d 582 (1989); FINK V. SHEDLER, 192

1 F.3d 911, 914 (9th Cir. 1999) CALIFORNIA PROVIDES
 2 THAT THE APPLICABLE LIMITATION PERIOD IS TOLLED
 3 FOR TWO YEARS ON GROUNDS OF "DISABILITY"
 4 WHEN A LITIGANT IS INCARCERATED FOR A TERM
 5 LESS THAN LIFE CAL CODE CIV PROC. § 352.1 (a)
 6 THIS TOLLING PROVISION OPERATES TO DELAY
 7 THE RUNNING OF THE LIMITATION'S PERIOD.
 8 CARLSON V. BLATT, 87 CAL APP 4TH 646, 650,
 9 150 CAL RPT2 2d 42 (2001) (IMPRISONMENT
 10 TOLLS RUNNING OF LIMITATIONS PERIOD FOR TWO
 11 YEARS FROM ACCRUAL OF CAUSE OF ACTION);
 12 JOHNSON V. STATE OF CALIFORNIA, 207 F.3d 650,
 13 654, (9th Cir 2000) ACCORDINGLY, CALIFORNIA
 14 INMATES HAVE A TOTAL OF FOUR (4) YEARS
 15 FROM THE ACCRUAL OF A CAUSE OF ACTION
 16 TO FILE A COMPLAINT.

18 ANALYSIS

19
 20 CITING CALIFORNIA CODE OF CIVIL PROCEDURE
 21 § 335.1, DEFENDANTS ARGUE THAT PLAINTIFF HAD TWO
 22 YEARS FROM THE DATE HE DISCOVERED HIS INJURY
 23 IN APRIL 2011 TO FILE A TIMELY CIVIL RIGHTS
 24 ACTION. DEFENDANTS ARGUE THAT THE INSTANT
 25 ACTION, FILED ON FEBRUARY 12, 2014, IS NOT
 26 TIMELY BECAUSE IT WAS NOT FILED WITHIN TWO
 27 YEARS OF APRIL 2011.

1 IN CALCULATING THE STATUTE OF LIMITATIONS,
 2 DEFENDANTS OMIT THE TWO YEARS OF TOLLING TO
 3 WHICH PLAINTIFF IS ENTITLED UNDER CALIFORNIA
 4 CODE OF CIVIL PROCEDURE § 352.1 (a) THUS, PLAINTIFF
 5 HAD FOUR (4) YEARS FROM APRIL 2011 TO FILE
 6 A TIMELY CIVIL RIGHTS ACTION. THE INSTANT
 7 CIVIL RIGHTS ACTION IS NOT BARRIED BY THE
 8 STATUTE OF LIMITATIONS BECAUSE IT WAS FILED
 9 WITHIN FOUR (4) YEARS OF APRIL 2011. BANKS
 10 V. U.C. REGENTS, 2016 U.S. DIST LEXIS 17839
 11 (E.D. FEBRUARY 12, 2016)

12 IN THE INSTANT CASE PLAINTIFF FILED
 13 HIS COMPLAINT MARCH 24, 2015 WHICH IS WITHIN
 14 FOUR (4) YEARS OF AUGUST OR SEPTEMBER 2011
 15 EVEN THE DEFENDANT ADMITS PLAINTIFF'S COMPLAINT
 16 WAS FILED WITHIN FOUR (4) YEARS SEE (DOC 55 FILED
 17 1-11-17 PAGE 12 OF 22 PAGE ID #: 540). JUST AS
 18 THE DEFENDANTS IN THE BANKS V. U.C. REGENTS,
 19 2016 U.S. DIST. LEXIS 17839 CASE ARGUED THAT THE
 20 PLAINTIFF HAD TWO (2) YEARS FROM THE DATE HE
 21 DISCOVERED HIS INJURY IN APRIL 2011 AND DEFENDANTS
 22 OMIT THE TWO YEARS OF TOLLING TO WHICH PLAINTIFF
 23 IS ENTITLED UNDER CCP § 352.1 THE DEFENDANTS
 24 IN THE INSTANT CASE OMIT THE TWO YEARS OF
 25 TOLLING AS WELL.

26 FINALLY IN BROOKS V. MERCY HOSPITAL (CAL.
 27 APP. 5TH DIST JULY 1, 2016). 204 CAL RPTB 3d 289,
 28 1 CAL. APP 5TH 1, 2016 CAL. APP. LEXIS 541. UNDER

1 A LONGSTANDING JUDICIAL CONSTRUCTION OF CAL
 2 CODE CIV. PROC. § 352.1, THE PHRASE "FOR A TERM
 3 LESS THAN LIFE" MEANS THAT ONLY THOSE
 4 SENTENCE TO LIFE WITHOUT POSSIBILITY OF PAROLE
 5 SHOULD BE EXCLUDED FROM THE TOLLING PROVISION.
 6 ACCORDINGLY, BECAUSE A PRISON INMATE'S LIFE
 7 SENTENCE INCLUDED THE POSSIBILITY OF PAROLE, §
 8 352.1 WAS APPLICABLE TO HIM, AND A TRIAL
 9 COURT THUS ERRED IN CONCLUDING THAT THE
 10 STATUTE OF LIMITATIONS HAD EXPIRED ON HIS
 11 MEDICAL MALPRACTICE CLAIM AGAINST A HOSPITAL.
 12 BROOK V. MERCY HOSPITAL, (CAL. APP. 5TH DIST. JULY
 13 1, 2016) 204 CAL. RPTB 3d 289, 1 CAL. APP. 5TH 1,
 14 2016 CAL. APP. LEXIS 541.

15 SECTION 352.1, THE SPECIAL TOLLING PROVISION
 16 RELATING TO PRISONERS, PROVIDES IN RELEVANT
 17 PART AS FOLLOWS: "IF A PERSON ENTITLED TO
 18 BRING AN ACTION ... IS, AT THE TIME CAUSE OF
 19 ACTION ACCRUED, IMPRISONED ON A CRIMINAL
 20 CHARGE, OR IN EXECUTION UNDER THE SENTENCE
 21 OF A CRIMINAL COURT, FOR A TERM LESS THAN
 22 LIFE, THE TIME OF THAT DISABILITY IS NOT A
 23 PART OF THE TIME LIMITED FOR THE COMMENCEMENT
 24 OF THE ACTION, NOT TO EXCEED TWO YEARS"
 25 (§ 352.1 SUBD. (a)) MOREOVER, IN MARTINEZ
 26 V. GOMEZ 137, F.3d 1124 (9TH CIR. 1998) THE COURT
 27 REVERSED THE ORDER OF THE DISTRICT COURT
 28 DISMISSING PLAINTIFF PRISONER'S SUIT ALLEGING

1 EXCESSIVE FORCE AS TIME BARRED AND REMANDED
2 THE CASE. THE COURT EXPLAINED THAT THE
3 CALIFORNIA STATUTE TOLLING THE STATUTE OF
4 LIMITATIONS APPLIED BECAUSE CALIFORNIA CASE
5 LAW PROVIDED THAT A PRISONER SERVING A
6 LIFE SENTENCE RECEIVED THE BENEFIT OF
7 TOLLING.

8 IN THIS CASE THE COURT CONSIDERED
9 WHETHER A PRISON SENTENCE OF LIFE WITH
10 THE POSSIBILITY OF PAROLE FALLS WITHIN CCP
11 § 352 (a)(3) WHICH TOLLS THE STATUTE OF
12 FOR PERSONS "IN EXECUTION UNDER THE
13 SENTENCE OF A CRIMINAL COURT FOR A TERM
14 LESS THAN LIFE", THE DISTRICT COURT HAD
15 JURISDICTION UNDER 28 U.S.C. § 1331 AND
16 42 U.S.C. § 1983 THE COURT STATED:

17 "WE HAVE JURISDICTION OVER THIS
18 TIMELY FILED APPEAL PURSUANT TO
19 28 USC § 1291 AND WE REVERSE
20 AND REMAND.

21
22 CALIFORNIA CODE OF CIVIL PROCEDURE § 352 (a)
23 (3) WHICH WAS AMENDED BY CALIFORNIA CODE OF
24 CIVIL PROCEDURE § 352.1 SEE MARTINEZ, 137 F.3d
25 AT 1125-26

1 IV. WHEN A PLAINTIFF APPEARS PRO SE,
2 THE COURT HAS AN OBLIGATION TO
3 CONSTRUE THE PLAINTIFFS COMPLAINT
4 LIBERALLY.

5
6 IN CONSIDERING A MOTION TO DISMISS,
7 THE COURT MUST ACCEPT ALL ALLEGATIONS OF
8 MATERIAL FACT IN THE COMPLAINT AS TRUE.
9 SEE ERICKSON V. PARDUS, 551 U.S. 89, 93-94,
10 127 S. Ct 2197, 167 L. Ed. 2d 1081 (2007). THE
11 COURT MUST ALSO CONSTRUE THE ALLEGED FACTS
12 IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF
13 SEE SCHEUER V. RHODES, 416 U.S. 232, 236, 94
14 S. Ct 1683, 40 L. Ed. 2d 90 (1974); SEE ALSO
15 HOSP. BLDG. CO. V. BEX HOSP. TRUSTEES, 425
16 U.S. 738, 740, 96 S. Ct. 1848, 48 L. Ed. 2d 338
17 (1976); BARNETT V. CENTONI, 31 F. 3d 813, 816
18 (9TH CIR. 1994) (PER CURIAM). ALL AMBIGUITIES
19 OR DOUBTS MUST ALSO BE RESOLVED IN THE
20 PLAINTIFF'S FAVOR. SEE JENKINS V. MCKELTHEN,
21 395 U.S. 411, 421, 89 S. Ct 1843, 23 L. Ed. 2d
22 404 (1969) HOWEVER, LEGALLY CONCLUSORY
23 STATEMENTS, NOT SUPPORTED BY ACTUAL FACTUAL
24 ALLEGATIONS, NEED NOT BE ACCEPTED. SEE
25 ASHCROFT V. IQBAL, 566 U.S. 662, 129 S. Ct
26 1937, 1949-50, 173 L. Ed. 2d 868 (2009). IN
27 ADDITION, PRO SEE PLEADINGS ARE HELD TO A
28 LESS STRINGENT STANDARD THAN THOSE

1 DRAFTED BY LAWYERS. SEE HAINES V. KERNER,
 2 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d
 3 652 (1972); SONNTAG V. NEV. COUNTY, 2011 U.S.
 4 DIST. LEXIS 99961 (E.D. CAL., SEPT. 6, 2011).
 5 WHEN A PLAINTIFF APPEARS PRO SE, THE COURT
 6 HAS AN OBLIGATION TO CONSTRUCT THE PLAINTIFF'S
 7 COMPLAINT LIBERALLY. SEE BERNHART V. LOS
 8 ANGELES COUNTY 339 F.3d 920, 925 (9TH CIR. 2003).
 9 PRO SE PLAINTIFFS IN A CIVIL RIGHTS ACTION
 10 MUST BE AFFORDED THE BENEFIT OF ANY DOUBT.
 11 SEE KARIM-PANAHI V. LOS ANGELES POLICE
 12 DEPT., 839 F.2d 621, 623 (9TH CIR. 1988)

13
 14 V. EQUITABLE TOLLING DOCTRINE IS TO
 15 SOFTEN THE HARSH IMPACT OF TECHNICAL
 16 RULES WHICH MIGHT OTHERWISE PREVENT
 17 A GOOD FAITH LITIGANT FROM HAVING
 18 A DAY IN COURT

19
 20 CALIFORNIA LAW "OPERATES INDEPENDENTLY
 21 OF THE LITERAL WORDING OF THE CODE OF CIVIL
 22 PROCEDURE' TO SUSPEND OR EXTEND A STATUTE
 23 OF LIMITATIONS AS NECESSARY TO ENSURE
 24 FUNDAMENTAL PRACTICALITY AND FAIRNESS."
 25 LANTZ V. CENTEX HOMES, 31 CAL 4TH 363, 2
 26 CAL. RPTER.3D 655, 660, 73 P.3D 517, 523 (2003)
 27 (CITATION AND INTERNAL QUOTATION MARKS OMITTED)
 28 THE PURPOSE OF CALIFORNIA'S EQUITABLE TOLLING

DOCTRINE " IS TO SOFTEN THE HARSH IMPACT OF
 TECHNICAL RULES WHICH MIGHT OTHERWISE PREVENT
 A GOOD FAITH LITIGANT FROM HAVING A DAY IN
 COURT. " DAVIDON V. COLUMBIA/HCA HEALTHCARE
 CORP., 241 F.3d 1131, 1137 (9TH CIR. 2001) (en
 banc) (QUOTING ADDISON V. STATE, 21 CAL.3d
 313, 146 CAL. RPTR 224 225, 578 P.2d 941, 942
 (1978) (INTERNAL QUOTATION MARKS OMITTED)
 THUS CALIFORNIA COURTS APPLY EQUITABLE
 TOLLING " TO PREVENT THE UNJUST TECHNICAL
 FORFEITURE OF CAUSES OF ACTION, WHERE THE
 DEFENDANT WOULD SUFFER NO PREJUDICE. "
 LANTZ, 2 CAL. RPTR. 3d AT 660, 73 P.3d AT
 523. APPLICATION OF CALIFORNIA'S EQUITABLE
 TOLLING DOCTRINE " REQUIRES A BALANCING
 OF THE INJUSTICE TO THE PLAINTIFF OCCASIONED
 BY THE BAR OF HIS CLAIM AGAINST THE EFFECT
 UPON THE IMPORTANT PUBLIC INTEREST OR POLICY
 EXPRESSED BY THE ... LIMITATIONS STATUTE. "
 ID AT 660, 73 P.3d AT 524 (QUOTING ADDISON,
 146 CAL. RPTR. AT 228, 578 P.2d AT 945.)
 (INTERNAL QUOTATION MARKS OMITTED) (OMISSION
 IN ORIGINAL)

THE LAW PROVIDES FOR TOLLING FOR CRIMINAL
 INMATES " IN RECOGNITION OF THEIR MORE
 LIMITED ABILITY TO INVESTIGATE THEIR CLAIMS,
 TO CONTACT LAWYERS AND TO AVAIL THEMSELVES
 OF THE JUDICIAL PROCESS, " THE COURT IN

1 JONES V. BLANAS 393, F.3d 918 (9TH CIR 2004)
 2 HAVE EMPHASIZED THAT " [I]N TERMS OF
 3 LIMITATIONS ON THE PRISONER, CONTINUOUS
 4 CUSTODY IS THE RELEVANT DISABILITY. "
 5 ELLIOTT V. CITY OF UNION CITY, 25 F. 3d 800,
 6 803 (9TH CIR. 1994) FOR THAT REASON THE BLANAS
 7 COURT HELD THAT " ACTUAL UNINTERRUPTED
 8 INCARCERATION IS THE TOUCHSTONE " FOR APPLYING
 9 CALIFORNIA'S TOLLING PROVISION FOR THE
 10 DISABILITY OF IMPRISONMENT SEE JONES V.
 11 BLANAS 393 F.3d 918 (9TH CIR 2004).

12 PLAINTIFF, ANTHONY BROWN'S UNINTERRUPTED
 13 INCARCERATION IS THE TOUCHSTONE FOR APPLYING
 14 CALIFORNIA'S TOLLING PROVISION FOR THE
 15 DISABILITY OF IMPRISONMENT CALIFORNIA CODE
 16 OF CIVIL PROCEDURE § 352.1. THE TOLLING
 17 STATUTE IS APPLICABLE TO INMATES SERVING
 18 A LIFE SENTENCE WITH THE POSSIBILITY OF
 19 PAROLE SUCH AS PLAINTIFF. SEE MARTINEZ
 20 V. GOMEZ, 137 F.3d 1124, 1126 (9TH CIR. 1998)

21
 22 THE INCIDENT GIVING RISE TO PLAINTIFF
 23 ANTHONY BROWN'S COMPLAINT EXHIBIT 1 ATTACHED
 24 OCCURRED AUGUST 08, 2011 THROUGH SEPTEMBER
 25 2011 EXHIBIT-4 ATTACHED AT WHICH POINT THE
 26 DEFENDANTS TOOK PLAINTIFF TO LAC STATE PRISON
 27 AND FROM SEPTEMBER 2011 THROUGH SEPTEMBER
 28 2014 THE FBI AND U.S. ATTORNEY'S OFFICE

1 DEBRIEFED PLAINTIFF REGARDING THE DEFENDANTS
 2 AS THE FBI / USAO WERE BUILDING THE
 3 CRIMINAL CASES (CR-13-00819, CR-15-0255 AND
 4 CR-16-0066) AGAINST DEFENDANTS PLEASE SEE
 5 EXHIBIT-3 AND EXHIBIT-4 ATTACHED THEREAFTER,
 6 PLAINTIFF WAS ALLOWED TO OBTAIN COUNSEL
 7 AND THE COMPLAINT EXHIBIT 1 ATTACHED WAS
 8 FILED IN A TIMELY FASHION.

9 PLAINTIFF ANTHONY BROWN HAD A MAXIMUM
 10 OF FOUR (4) YEARS TO FILE AN ACTION:
 11 TWO YEARS FOR THE PERSONAL INJURY CAUSE
 12 OF ACTION: AND TWO YEARS FOR THE DISABILITY OF
 13 IMPRISONMENT. SEE MALDONADO, 370 F.3d
 14 AT 954, CAL CIV. PROC. CODE § 352.1 (a)
 15 SEE ALSO SMITH V. COOPER, 2012 U.S. DIST
 16 LEXIS 44134 AND BANKS V. U.C. REGENTS,
 17 2016 U.S. DIST LEXIS 17839 (E.D FEBRUARY
 18 12, 2016)

19 PLAINTIFF CONTENDS JUST AS NO ONE
 20 THOUGHT THAT THE DEFENDANTS IN THIS CASE
 21 WOULD BE CONVICTED DUE TO POLICE CORRUPTION
 22 AND MISCONDUCT RELATED TO PLAINTIFF SEE
 23 U.S. DISTRICT COURT CRIMINAL CASE NUMBERS
 24 CR-13-00819, CR-15-0255 AND CR-16-0066
 25 RE: THE DEFENDANTS. PLAINTIFF ANTHONY
 26 BROWN IS CONFIDENT THAT HIS CRIMINAL
 27 CONVICTION RE: CASE NO B360070 WILL BE
 28 OVERTURNED DUE TO POLICE CORRUPTION AND

1 MISCONDUCT AS WELL.

2
3 THE COURT SHOULD NOT IGNORE ESTABLISHED
4 LAW AT THE BEHEST OF THE DEFENDANTS
5 HOWEVER, THIS COURT MUST EMBRACE THE LAW.
6
7
8
9

10 CONCLUSION
11

12 FOR THE FOREGOING REASONS PLAINTIFF
13 ANTHONY BROWN RESPECTFULLY OBJECT TO THE
14 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
15 RE: DEFENDANTS MOTION FOR JUDGMENT ON THE
16 PLEADINGS; AND RESPECTFULLY REQUEST THAT THE
17 COURT DISMISS THE DEFENDANTS MOTION FOR
18 JUDGMENT ON THE PLEADINGS
19
20

21 DATED: AUGUST 17, 2018

By: _____

22 ANTHONY BROWN SR
23 PRO-SE PLAINTIFF
24
25
26
27
28

PROOF OF SERVICE BY UNITED STATES MAIL

I, ANTHONY BROOKS, am over the age of eighteen years, a resident and prisoner of the State of California with a present mailing address of:

On AUGUST 17, 2018, I served the following document(s):

OBJECTIONS TO THE AMENDED REPORT AND
RECOMMENDATION

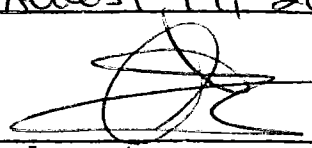
by placing the document(s) in a sealed envelope(s), with First Class postage having been placed thereon. Delivered the envelope(s) to a Correctional Officer who then signed & dated the back of the envelope and s/he then deposited such envelope(s) in the prisons internal legal mail system for processing and delivery to the United States Postal Service, for delivery to the addressee(s):

HURRELL CANTRALL LLP
300 SOUTH GRAND AVE
SUITE 1300
LOS ANGELES, CA 90071

LAWRENCE BEACH ALLEN
& CHOI, PC
100 WEST BROADWAY,
SUITE 1200
GLENDALE, CA 91210-1219

I declare that there has been regular U.S. mail pick-up by the Correctional Officers at the prison where I posted the envelope(s) and regular communication by mail between the place of mailing and the place(s) so addressed.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and the this declaration was executed on AUGUST 17, 2018,
at IONE, CALIFORNIA


Declarant

NOTE: Pursuant to the holdings in Houston v. Lack (1988) 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245; and, In re Jordan (1992) 4 Cal.4th 116, 13 Cal.Rptr.2d 878, 840 P.2d 983, (inmate legal documents are deemed filed on the date they are delivered to prison staff for processing and mailing via the institutions internal legal mail procedures).

EXHIBIT 2